THE HONOURABLE SRI JUSTICE T.CH. SURYA RAO

AND

THE HONOURABLE SRI JUSTICE G. CHANDRAIAH

W.P. No.24517 of 2006

ORDER: (Per the Hon'ble Sri Justice T.Ch.Surya Rao)

In the instant writ petition, the petitioners seek a Writ of *Certiorari* to quash the judgment dated 06-11-2006 passed by the learned Special Court in L.G.A. No.2 of 2005.

The writ petitioners are the respondents in L.G.A. No.2 of 2005. The 1st respondent herein filed, initially, through his General Power of Attorney holder, the land grabbing case in L.G.O.P. No.940 of 1990 against the petitioners.

That application, eventually at the culmination of enquiry, when ended in dismissal by the learned Special Tribunal, the matter was carried in appeal to the Special Court and under the impugned order, the learned Special Court allowed the appeal and directed the matter to be remanded to the Special Tribunal for fresh disposal. It is that order of remand is now sought to be assailed, as aforesaid.

The matter seems to have a chequered career. Claiming himself to be the owner of the land in Plot No.51 covered by Survey No.129/101 of Shaikpet Village, which is an extent of 418 square meters and alleging *inter alia* that the respondents were the land

grabbers, the petitioner filed L.G.C. No.940 of 1990 seeking eviction of the respondents. That application was resisted by the respondents on the premise that the land in dispute is covered by Survey No.129/102 and the respondents being the purchasers thereof from the original pattedar Smt. Rasool Bee were the owners. Alternatively they also pleaded title by adverse possession to the property.

At the time of enquiry, three witnesses were examined on the side of the applicant and Exs.A-1 to A-8 were got marked. Two witnesses were examined on the side of the respondents and Exs.B-1 to B-12 were got marked, besides Exs.X-1 and X-1(a).

Appreciating the evidence adduced on either side, the learned Special Tribunal was of the view that the respondents therein were the land grabbers and consequently allowed the application by his judgment dated 28-06-2002. Assailing the said judgment, the respondents filed L.G.A. No.13 of 2002 before the learned Special Court. The learned Special Court by its judgment dated 07-01-2004 allowed the appeal and remitted the matter to the Special Tribunal for fresh disposal directing the Special Tribunal to deliver judgment afresh on all the issues. After remand, the matter was restored to the file of the Special Tribunal, Chief Judge, City Civil Court, Hyderabad. The parties did not choose to adduce any further oral evidence in the matter.

Upon hearing the arguments on either side, the learned

Special Tribunal dismissed the petition. Having been aggrieved by the said judgment dated 19-08-2004, the applicant carried the matter in appeal to the Special Court in L.G.A. No.2 of 2005 under the impugned order dated
06-11-2006. The learned Special Court allowed the appeal while setting aside the order passed by the Special Tribunal and directed the matter to be remitted to the Special Tribunal for fresh disposal on merits after giving opportunity to both parties to adduce evidence. Although, the matter was remanded for fresh disposal, the respondents in the application and the appeal as well seek to prefer the present writ petition. That is how the matter has come up before us after two earlier remands.

Sri V. Rajagopal Reddy, learned counsel appearing for the writ petitioners, represents that the appeal should have been dismissed by the learned Special Court when it had been noticed that Rule 6 of the Rules framed under the
A.P. Land Grabbing (Prohibition) Act, 1982 (for short 'the Act') was not complied with, particularly, when a Division Bench of this Court in ***SHALIVAHANA BUILDERS PVT. LTD AND ANOTHER v. SRI GANAPATHY CO-OPERATIVE HOUSING SOCIETY AND OTHERS***[1] and even the Full Bench of this Court in ***MOHD. SIDDIQ ALI KHAN AND OTHERS v. SHAHSUN FINANCE LIMITED, CHENNAI AND ANOTHER***[2] subsequent judgment dismissed the

applications, eventually when it was noticed that Rule 6 was not complied with.

The grievance of the writ petitioners seems to be that when there has been non-compliance of Rule 6, which is mandatory provision, the matter should have been ended in dismissal and there was no need to remand the matter for fresh disposal.

The short question that falls for determination in this writ petition, under the facts and circumstances of the
case, when Rule 6 of the Rules framed under the Act has not been complied with, whether the matter entails dismissal?

Before adverting to the point that is sought to be canvassed by the learned counsel for the writ petitioners,
it may be mentioned, at the out set, that the writ petitioners are the respondents along with others in L.G.C. No.103 of 1999 filed by the State before the learned Special Court.
That application, after conducting an enquiry, at its culmination, was eventually allowed by the learned Special Court declaring the property covered therein as the property of the State and the respondents therein were the grabbers. After disposal of the L.G.C. No.103 of 1999, the writ petitioners in the instant writ petition, who are the respondents therein, seem to have applied for regularization of their possession. The

property covered by L.G.O.P. No.940 of 1990 and the property covered in L.G.C. No.103 of 1999 appeared to be one and the same. However, respondents 2 and 3 herein are the subsequent purchasers from the 1st respondent are obviously not parties to L.G.C. No.103 of 1999. It seems that the respondents 2 and 3 herein filed a civil suit in O.S. No.443 of 2004 on the file of the II Additional Chief Judge, City Civil Court, Hyderabad for declaration that they are the absolute owners and possessors of the land covered by Plot No.51 in Survey No.129/101. The writ petitioners are the defendants 1 and 2 besides the State as

3rd defendant therein and the said suit is now pending for adjudication before the Civil Court. In the light of the above background, the contention of the writ petitioners shall have to be considered.

Having regard to the short nature of the controversy involved, we may straightaway proceed to consider,

at the threshold, the judgment rendered by a coequal Bench of this Court in Shalivahana Builders' case (supra 1).

That was a case where the Special Court, at the culmination of enquiry, reached the conclusion that the respondents therein were the grabbers. Assailing the judgment of the Special Court, the respondents filed the writ petition before this Court while seeking to attack the impugned judgment therein on merits on various flanks. It was contended before this Court that there

had been non-compliance of mandatory provisions of Rule 6 of the Rules framed under the Act.

It appears, during the pendency of the land grabbing case,

a suit in O.S. No.817 of 1986 was filed by the respondents on the file of the III Additional Judge, City Civil Court, Secunderabad on the ground that the applicants were dispossessed from the land in an extent of Ac.1.28 guntas. Under those circumstances, this Court was of the view that it was open to the applicants, who are the respondents before this Court, to avail such remedies for recovery of the land, which they claimed to have lost during the pendency of the case. In that view of the matter, as Rule 6 was held to be mandatory in nature, eventually this Court dismissed the writ petition. The dismissal, however, is not solely having regard to the fact that there had been non-compliance of Rule 6. Again Rule 6 came up for interpretation before a Full Bench of this Court in Mohd. Siddiq Ali Khan's case (supra 2).

That was a case where when the land grabbing case came up for admission before the Special Court, the respondents appeared before the Special Court and raised an objection as to the maintainability of the L.G.C. The Special Court after having provided an opportunity of being heard to both parties and after having satisfied with the *prima facie* evidence took cognizance of the case. That order was sought to be assailed in the writ petition. It was sought to be continued before the Full Bench that the averments

made *inter alia* in the application assuming them to be true, for the purpose of application, would not make out any cause of action for initiation of the proceedings. Simultaneously, it was contended that the Special Court could not have taken cognizance without following mandatory provisions of Rule 6. Both the points were adverted to and eventually the Full Bench of this Court was of the view that there had been no cause of action to file the application and the provisions of Rule 6 were mandatory in nature and having not been complied with before taking cognizance, the very taking cognizance by the Special Court on both the flanks was wrong.

From the above, it is obvious that in both the cases although the provisions of Rule 6 of the Rules came up for consideration and while holding on both occasions that Rule 6 of the Rules framed under the Act was mandatory in nature, the matters were dealt on other aspects which were germane as per the matrix in the above two cases and the eventual result was followed up. At any rate, it was not solely on the basis that inasmuch as, the mandatory provision of Rule 6, had not been complied with the matters ended in dismissal of both the occasions. That apart, it is obvious from a perusal of both the judgments rendered by this Court that before taking cognizance of the case, the scrutiny of the contents averred *inter alia* in the application in order to decide as to whether the application is frivolous or vexatious one or a *prima facie* case is discernible therefrom so as to take cognizance

of the case is very much required. In order to decide as to whether the application is frivolous or vexatious or the necessary ingredients that constitute the act of land grabbing are *prima facie* discernible from the averments made *inter alia* in the application, the Special Tribunal or the Special Court, as the case may be, to form such an opinion, may look into the report of the Mandal Revenue Officer, inasmuch as such report essentially contains the details of the correctness of the statements made in the application and the facts relating to the ownership, actual possession and user of the land concerned etc. Therefore, it was held that the verification of application and submission of report by the Mandal Revenue Officer or the authorized Officer, as the case may be, shall be considered as mandatory requirement, in the absence of which, the Court may not be in a position to form its opinion. In the absence of such a report, initial cognizance taken by the Court/Tribunal cannot be sustained is the spirit in both the judgments. It is always open to the parties, in such cases, to take appropriate remedies. The matters, obviously, in such circumstances, cannot be considered to have been held on merits apart from non-compliance of Rule 6. When this legal position is clear, the contention that the learned Special Court should have dismissed the appeal, inasmuch as, there had been non-compliance of Rule 6 merits no consideration.

It may be mentioned here that it is always open to the writ petitioners to take up appropriate pleas, if

they are so advised, when the matter comes up before the
Special Tribunal for fresh consideration not only that although other legitimate pleas, which are available, having regard to the subsequent events can also be taken up by them and in which event, it is for the Tribunal to pass appropriate orders while adverting to respective contentions of the parties.

For the above reasons, the Writ Petition fails and is dismissed, at the threshold, but under the circumstances no order as to costs. Having regard to the above chequered career, the learned Special Tribunal may make every endeavour to dispose of the case, as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of this order.

T. CH. SURYA RAO, J

Date:05-01-2007

G. CHANDRAIAH, J

LSK/MRB

[1] 2003(2) ALT 511 (D.B.)

[2] 2005 (2) ALD 675 (FB)